

REMARKS

This responds to the Final Office Action dated June 21, 2010.

Claims 12, 17-19, and 23-24 are amended, claims 1-11 are canceled, without prejudice to or disclaimer by the Applicant; claims 25-28 are newly added; as a result, claims 12-28 are now pending in this application.

The Rejection of Claims Under § 112

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has positively recited the elements questioned by the Examiner; as such, this rejection is now a moot point.

The Rejection of Claims Under § 102

Claims 12 and 14-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Swanson (U.S. Publication No. 2004/0252505). To sustain an anticipation rejection, each and every element in the rejected claims must be taught or suggested in the exact detail and identical arrangement in the cited reference.

Swanson is directed to illuminating a desired area for providing light. Swanson is not directed to supplying heat. In fact, nowhere in the entire Swanson reference is there any mention of "heat," "radiation," or "infrared." Halogens, incandescent and fluorescent are mentioned but only in connection with light bulbs for providing luminance and not in connection with heat.

Infrared light is one part of the light spectrum and it is not visible. The goal of Swanson is to provide light for illumination of an area surrounding a lamp. Applicant's teachings are directed toward focused heat for heating a surface and this is done via non-visible (invisible) light, to wit, infrared.

In fact, light produced near the infrared region is uncomfortable to the human eye and is not usable for Swanson or any of the art cited by the Examiner.

Swanson does not show or even suggest an "infrared heating module;" which is now positively recited in amended claim 12. Furthermore, Swanson cannot be said to inherently

teach such a module because to make such an assertion would defeat the very purpose of Swanson, which is providing illumination.

Accordingly, the rejections with respect to Swanson should be withdrawn and claims 12-13 allowed; Applicant respectfully requests an indication of the same.

Claims 19, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Feyrer (U.S. Patent No. 1,232,908). To sustain an anticipation rejection, each and every element in the rejected claims must be taught or suggested in the exact detail and identical arrangement in the cited reference.

Feyrer does not show or suggest heaters that are individually adjustable. Positions of heaters in Feyrer are changeable but only altogether as a single unit; so, the positions of heaters in Feyrer are not individually adjustable.

Feyrer also does not show or suggest an adjustable frame that is expandable and contractible in one direction in one plane parallel to the radiative heaters, which is now recited in amended independent claim 19.

As such, Feyrer cannot be said to anticipate each and every element of amended independent claim 19. Thus, Applicant respectfully requests that the rejections of claim 19 and its dependent claims be withdrawn and these claims allowed.

The Rejection of Claims Under § 103

Claims 13, 19 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson (U.S. Publication No. 2004/0252505) in view of Chapman, Jr. et al. (U.S. Patent No. 3,694,647; hereinafter “Chapman”). Obviousness requires that each and every element be taught or suggested in the proposed combination of references.

Swanson cannot be used in the proposed combination because it teaches away from Applicant’s invention and would be rendered useless for Swanson’s intended purposes if modified in any manner to provide infrared heat because Swanson is directed to providing illumination and not directed to providing heat. Therefore, initially Applicant would like the record to reflect that Applicant believes Swanson cannot be used in any combination for purposes of obviousness to reject Applicant’s claims.

Moreover, Chapman only mentions radiation but not specifically radiation with respect to heating. In fact, Chapman also teaches away from infrared heating or radiative heating. So, Applicant also does not believe that Chapman is properly recited against Applicant's claims of record.

Notwithstanding the noted contention above, the proposed combination does not show or suggest an adjustable frame that is expandable and contractible in one direction in one plane that is parallel to radiative heaters, which is not recited in amended independent claim 19. At best, Chapman shows arms that swing out in separate parallel planes changing the distance and angle of the light from its base and in reference to a work-piece being illuminated.

Therefore, the rejections with respect to the above-noted claims should be withdrawn and the claims in question allowed. Applicant respectfully requests an indication of the same.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Feyrer (U.S. Patent No. 1,232,908), or Swanson in view of Chapman as applied to claims 13, 19 and 22-24 as above, and further in view of Cekic et al. (U.S. Patent No. 7,697,971; hereinafter "Cekic") or Robinson (U.S. Patent No. 4,366,411). In view of the amendments and remarks presented above with respect to the independent claims, this rejection should be withdrawn. Applicant respectfully requests an indication of the same from the learned Examiner.

Applicant also notes that none of this cited art deals with heat and therefore Applicant believes the references and the combination are not permitted to be recited against claim 20.

Allowable Subject Matter

Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant acknowledges and appreciates the Examiner's indication that claim 21 was in condition for allowance if rewritten in independent format; however, Applicant believes that this is unnecessary in view of the amendments and remarks presented above with respect to the pending independent claims.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action; however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

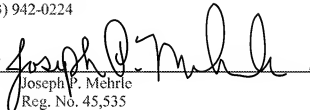
Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402--0938
(513) 942-0224

Date 10-14-2010

By /  /
Joseph P. Mehrle
Reg. No. 45,535

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14TH day of October, 2010.



Jonathan Ferguson